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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,124	07/30/2003	Mark W. Publicover	4859-66667-01/RJP	1863

7590 10/11/2005  
Mark W. Publicover  
18505 Marshall Lane  
Saratoga, CA 95070

EXAMINER
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GARG, YOGESH C

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*He*

**Office Action Summary**

Application No.

10/632,124

Applicant(s)

PUBLICOVER, MARK W.

Examiner

Yogesh C. Garg

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/15/2005
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Amendment***

1. Applicant's amendment received on 7/25/2005 is acknowledged and entered. Claims 1, 4, 16 and 18 are amended. Currently claims 1-18 are pending for examination.

### ***Response to Arguments /Election/Restrictions***

2.1. Applicant's arguments concerning currently amended claims 16 and 18, see Remarks, page 7, filed on 7/25/2005 have been considered but are moot due to the applicant's shift to claiming another inventions after an election is once made and action given on the elected subject matter. Newly amended independent claims 16 and 18 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Currently amended independent claims 16 and 18 recite a new limitation, that is ***having a parking lot with designated spaces for parking, which designated parking spaces correspond to delivery locations for shipments present at the DS.....*** (see independent claims 16, and 18 and Remarks, see page 7) has a different and distinct utility, than the earlier claimed inventions, that is using designated parking spaces as corresponding delivery locations for shipment present at the DS which corresponds to a different embodiment, and representative of one of several species/embodiments disclosed, see applicant's specification, paragraph 0055, Fig.6D. The originally claimed invention

represented a generic DS, see Fig.5 and paragraph 0039 . The applicant has already elected an invention, which did not recite or need a utility for using designated parking spaces as corresponding delivery locations for shipment present at the DS.

Therefore the currently amended claims 16 and 18 are distinct and divergent from the earlier claimed inventions and would require a new, divergent and different search. Such change in the inventions amount to a " Shift claiming another invention after an election is once made and action given on the elected subject matter and are therefore subject to " Election by Original Presentation".

Kindly refer to the following MPEP excerpts for guidelines:

**" 819 Office Generally Does Not Permit Shift:**

The general policy of the Office is not to permit the applicant to shift to claiming another invention after an election is once made and action given on the elected subject matter. **Note that the applicant cannot, as a matter of right, file a request for continued examination (RCE) to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (i.e., applicant cannot switch inventions by way of an RCE as a matter of right).** When claims are presented which the examiner holds are drawn to an invention other than the one elected, he or she should treat the claims as outlined in **MPEP § 821.03**.

Where the inventions are distinct and of such a nature that the Office compels restriction, an election is not waived even though the examiner gives action upon the patentability of the claims to the nonelected invention. *Ex parte Loewenbach*, 1904 C.D. 170, 110 O.G. 857 (Comm'r Pat. 1904) and *In re Waugh*, 135 F.2d 627, 57 USPQ 371 (CCPA 1943).

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**821.03 Claims for Different Invention Added After an Office Action - 800 Restriction in Applications Filed Under 35 U.S.C. 111; Double Patenting**

**821.03 Claims for Different Invention Added After an Office Action**

Claims added by amendment following action by the examiner, **MPEP § 818.01, § 818.02(a)**, to an invention other than previously claimed, should be treated as indicated by **37 CFR 1.145**.

**37 CFR 1.145 Subsequent presentation of claims for different invention.**

If, after an office action on an application, the applicant presents claims directed to an invention distinct from and independent of the invention previously claimed, the applicant will be required to restrict the claims to the invention previously claimed if the amendment is entered, subject to reconsideration and review as provided in **§§ 1.143 and 1.144**

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The action should include form paragraph 8.04.....”.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16 and 18 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

2.2. The applicant's arguments regarding claims 1-15 and 17 have been considered but are not persuasive for following reasons:

(i) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., ***having a parking lot with designated spaces for parking, which designated parking spaces correspond to delivery locations for shipments present at the DS***) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(ii) The applicant's arguments are moot in view of the new grounds of rejection necessitated due to current amendment.

2.3. With regards to claims 4-9, the examiner rejected them under 35 USC 103 (a) as being unpatentable over Lester in view of Porter and further in view of Official Notice. The applicant has neither traversed the facts and benefits of the Official Notice, taken by the examiner, nor asked for a documentary evidence. Therefore, in view of the applicant's not traversing the examiner's assertion of the Official Notice and as per *MPEP-2144.03 [R-1] C Reliance on Common Knowledge in the Art or "Well Known" Prior Art* -, the common knowledge or well-known fact considered as Official Notice in the art statement is taken to be admitted prior art for further rejection of these claims 4-9.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Currently amended claim 1, in lines 14-16 recites the limitation, "notifying the first individual or the first designated agent of a particular parking space where the first individual or the first designated agent can receive the shipment at the DS ". It is unclear if the item is to be received by the orderer at the DS

site or the parking lot because the claim does not specify that the designated parking lots correspond to delivery locations but in 1 (e) the limitation clearly states that the shipment is transported to a DS for retrieving the shipment. As best understood by the examiner the item is retrieved at the DS and therefore, claim 1 and its dependent claims 2-15 and 17 would be treated accordingly on further merits.

4. Note: Examiner cites particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Claim Rejections - 35 USC § 102***

5 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, and 14-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Yamada (US Patent 6,336,100).

Note: Claim 1 is being treated on further merits as analyzed above under rejection **35 USC § 112, second paragraph.**

Regarding claim 1, Yamada discloses a method of distributing at least one item to an individual, the method comprising:

(a) receiving an order from a first individual for the at least one item (see at least col.2, line 66-col.3, line 5 which teach receiving an order for an item),

(b) generating an order packet corresponding to the order of the first individual (see at least col.3, lines 20-25 which teach that the retailer generates an order packet for manufacturing comprising the order and delivery information),

(c & d) in response to the order packet, shipping the at least one item to a consolidating distribution center and packaging the at least one item and labeling the at least one item so as to be identifiable as intended for the first individual, thereby producing a shipment (see at least col.3 lines 26-31, which teach that in response to the receipt of order information, that is order packet, the item is shipped with the delivery statement, from the manufacturer to the home deliverer "7" via the retailer. The home deliverer "7" corresponds to the claimed consolidating distribution center and it is implied that the home deliverer "7" receives the item to be shipped after it has



been labeled with necessary identification for delivery to the first individual who has ordered the item );

(e) transporting the shipment to a substantially unattended secure designated item exchange site (DS) from which the first individual or a first designated agent can retrieve the shipment, the DS being specified by the first individual with the order placed in and chosen from a plurality of available DSs, the specified DS having a parking lot with designated spaces for parking (see at least col.3, lines 37-41, col.1, lines 45 and see Fig.4, 5 and 6 which teach the orderer can choose from a number of stations, that is DSs, such as station 1, station 2, which could be a home or office or a store location where the item shipment could be delivered, stored temporarily and picked up by the orderer. The destination such as residence, office space, stores do have parking areas with designated spaces for residents, office employees or visitors, or store owners);

(f) notifying the first individual or the first designated agent of a particular parking space where the first individual or the first designated agent can receive the shipment at the DS (see at least col.3, lines 43-47 which teach notifying the orderer for receiving the ordered shipment at the designated site); and

repeating steps (a) through (f) inclusive for a second individual in place of the first individual, using the same DS (Yamada's invention is an online shopping system applicable for a plurality of shoppers who can place orders for shipment of items to be picked at a DS, see col.2, lines 30-33.)

Regarding claim 2, Yamada discloses that the DS is at least semi-automated (see at least col.3, lines 60-65 and Fig.1 which teaches that the convenience store, that is the DS, has a terminal "9a" in communication via a network with the order's terminal).

Regarding claim 14, Yamada teaches that there is a multiplicity of items Distributed (see at least Fig.7 which teaches that a multiplicity of items, such as fashion related, musical CDs or outdoor gear items can be sold and distributed.)

Regarding claim 15, Yamada discloses a first item originates from a first supplier and a second item originates from a second supplier (see col.2, lines 40-44 and Fig.7 which tech that there is more than one manufacturers/wholesalers who supply multiplicity of items as indicated in Fig.7).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6.1. Claims 3-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada in view of Porter (US Patent 6,426,699) and further in view of Official Notice.

Regarding claims 3-9, Yamada does not teach that the method further comprises a DS, which is fully automated, accessing the DS by the individual through use of a personal identifier in order to retrieve the shipment, wherein the personal identifier identifies the individual at least in part through information chosen from the group consisting of biometric, numeric, alpha-numeric, alphabetic, physical, statistically assigned and randomly assigned, wherein the biometric information is chosen from the group consisting of a retinal scan, a digital thumb print, a voice print, a chemical skin print, a pheromone print, a genetic print, an odor print and combinations thereof, wherein the personal identifier is encoded in a physical key, wherein the physical key is chosen from the group consisting of a key card and a biological sample, wherein the biological sample is chosen from the group consisting of sweat, blood, spittle, breath, hair, dermal cells, dermal cell contact and mixtures thereof. However, Porter in the same field of endeavor teaches these missing limitations (see at least col.3, line 55- col.6, line 44, "*As illustrated in FIG. 11, the storage device 10 includes a lock 56 for locking the door 42 and a lock operator 58 for locking and unlocking the lock. In preferred forms, the lock operator includes an input device such as an alphanumeric keypad 60 for permitting the entry of keycodes. As described in more detail below, the lock operator unlocks the lock only when a correct keycode is entered into the keypad. The lock operator also may be coupled with other types of entry controlling devices such as a card reader, voice recognition device, fingerprint identification system, infrared sensor, bar code reader, or radio signal controlled or contact less smart card having a computer microchip embedded thereon, or the like.....*" . Note: the storage device 10 for packages corresponds to a fully automated DS from where the packages are retrieved by using a personal identifier either biometric or numeric or alphanumeric, or physical key.

Yamada in view of Porter does not disclose some of the identifiers, viz: retinal scan, a chemical skin print, a pheromone print, a genetic print, an odor print and combinations thereof, and a biological sample, wherein the biological sample is chosen from the group consisting of sweat, blood, spittle, breath, hair, dermal cells, dermal cell contact and mixtures. However, the examiner takes an Official Notice for the missing identifiers, as those were well-known identifiers being used for authentication.

In view of Porter and the Official Notice taken by the examiner, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have incorporated the features of accessing the automated DS by the individual through use of a personal identifier in order to retrieve the shipment, wherein the personal identifier identifies the individual at least in part through information chosen from the group consisting of biometric, numeric, alpha-numeric, alphabetic, physical, statistically assigned and randomly assigned, wherein the biometric information is chosen from the group consisting of a retinal scan, a digital thumb print, a voice print, a chemical skin print, a pheromone print, a genetic print, an odor print and combinations thereof, wherein the personal identifier is encoded in a physical key, wherein the physical key is chosen from the group consisting of a key card and a biological sample, wherein the biological sample is chosen from the group consisting of sweat, blood, spittle, breath, hair, dermal cells, dermal cell contact and mixtures thereof **because** that would enable authorized people to retrieve the packages and would not allow access to unauthorized people.

Regarding claims 10-11, Yamada does not disclose comprising triggering a notification system upon accessing the secure designated site or retrieval of the shipment wherein the notification system notifies at least one party chosen from the group consisting of an item supplier, a distribution center, a consolidated distribution center and the individual. However, in the same filed of endeavor, Porter teaches these limitations (see at least col.4, lines 1-12, “ *In preferred forms, the storage device 10 also includes a communication and control apparatus 62 for **controlling access to the device and for providing notification that goods have been delivered to or picked up from the device.** As illustrated in FIG. 11, ..... The communication and control apparatus is described in more detail in U.S. Pat. No. 5,774,053, which is incorporated herein by reference. ....*”, and col.5, lines 13-21 “ *The communication and control apparatus 62 is preferably part of a delivery system that allows messages to be sent to and received from several locations remote from the enclosure. For example, a remote communications apparatus may be placed in the homeowner's home and another remote communication apparatus may be positioned in a vendor's business. ....*”). In view of Porter, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have incorporated the feature of triggering a notification system upon accessing the secure designated site or retrieval of the shipment wherein the notification system notifies at least one party chosen from the group consisting of an item supplier, a distribution center, a consolidated distribution center and the individual because such notification would inform the customer of the arrival of the package so that he can pick up and at the same time enable the vendor to charge the customer.

6.2. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada in view of Christ (US Patent 5834706).

Regarding claim 12, Yamada does not explicitly teach that the labeling is accomplished by a labeling device that comprises information relating to the individual, the individual personal identifier, the order, the at least one item, the secure designated site, the consolidated distribution center, the shipment or the order packet but it is understood that such labeling is required to ship the packages so that they reach the intended destination smoothly. However, in the same field of endeavor, Christ teaches that the labeling is accomplished by a labeling device that comprises information relating to the individual, the individual personal identifier, the order, the at least one item, the secure designated site, the consolidated distribution center, the shipment or the order packet (see at least col.10, lines 51-61 and col.6, lines 18-65 which teaches the use of labeling device "15" in communication with EDP system for importing the required information relating to the individual, the individual personal identifier, the order, the at least one item, the secure designated site, the consolidated distribution center, the shipment or the order packet ). In view of Christ, at the time of the applicant's invention it would have been obvious to one of an ordinary skill in the art to have modified Yamada to incorporate the feature that the labeling is accomplished by a labeling device that comprises information relating to the individual, the individual personal identifier, the order, the at least one item, the secure designated site, the consolidated distribution center, the shipment or the order packet because the outgoing

shipments can be delivered to their respective destinations without errors, as taught in Christ (see at least col.1, lines 15-36).

6.3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada in view of Eggleston et al. (US Patent 6,061,660), hereinafter referred to Eggleston.

Regarding claim 13, Yamada does not disclose that the labeling comprises providing a smart chip. However, Eggleston discloses that the labeling comprises providing a smart chip to solve the same problem as faced by the applicant of providing information in a smart card embedded with a chip (see at least col.13, lines 29-42, "*Once a consumer has registered as a consumer member of the host system, the consumer's name, address, password, and PIN may be sent to a third party provider of electronic payment cards. The electronic payment card provider may then issue the card 11 to the consumer. The card 11 may have a magnetic strip coded for the PIN number or password that links the consumer to the consumer's entry in the consumer database 200. The card 11 may be any conventional electronic payment card, or may be a microchip-embedded smart card, in which case additional data selected from the consumer database 200 may be included for access by retailers verifying prize information.*" . Also, see col.22, lines 37-48 and col.41, line 66-col.42, line 32. In view of Eggleston, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have incorporated the feature of providing labeling information in a smart chip because, as shown in Eggleston, card embedded with smart chip could be of any one of the types, such as ATM card, or credit card, etc. which enables to store identification information, about the user or any other object, such as a package and also any other

additional information which can be used later to check/authenticate the individual or package and also know other relevant information stored therein.

6.4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yamada in view of Tsukuda et al. (US Patent 6,061,660), hereinafter referred to Tsukuda.

Regarding claim 17, Yamada does not suggest that in the method of claim 1, wherein the first and second individuals must be members of a members-only distribution system. However, in the analogous field of endeavor Tsukuda discloses that the first and second individuals must be members of a members-only distribution system (see at least col.7, lines 38-46, *"In a step 1001 in FIG. 10, the information inputted from the input apparatus is registered into the commissioned goods information 125. For example, in case that the information inputted from the input apparatus is "contract code: 2529, purchased goods: book, electronic address of distributor: info@a-butu.co, electronic address of purchaser: tsukuda@aaa.bbb" as shown in FIG. 9, the day when those information are inputted is treated as the day of arrival so as to set the commissioned goods information 901."*). Note: Registering the information of purchasers corresponds to the fact that they become members because all the purchasers are required to register them. In view of Tsukuda, it would have been obvious to one of an ordinary skill in the art at the time of the applicant's invention to have incorporated the feature of making the first and second individuals as members of a members-only distribution system because, as shown in Tsukuda, because it enables the system to provide services to users whose personal information, such as names, addresses,



telephone numbers/e-mail, etc. are known which makes it convenient and possible to communicate with them as and when required.

### ***Conclusion***

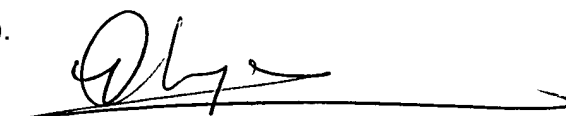
7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on M-F(8:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 571-272-7159. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yogesh C Garg  
Primary Examiner  
Art Unit 3625

YCG  
October 5, 2005